U.S. Department
of Transportation
**Federal Aviation
Administration**

Federal Aviation Administration
Great Lakes Region

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FEB 2 3 2012

Mr. Richard S. Porter
Hinshaw & Culbertson LLP
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P.O. Box 1389
Rockford, IL 61105

Dear Mr. Porter:

Thank you for your letter dated October 25, 2011, on behalf of the City of Park Ridge. The letter requests that the Federal Aviation Administration (FAA) prepare a Supplemental Environmental Impact Statement (SEIS) for the O'Hare Modernization Program. FAA has addressed the issues in the letter, in the enclosure entitled: "FAA Response to City of Park Ridge Request Dated October 25, 2011."

The FAA appreciates the opportunity to address the concerns of the residents of Park Ridge related to the O'Hare Modernization. FAA takes its environmental commitments and obligations seriously.

However, after careful consideration the FAA has not been provided sufficient information to warrant the preparation of a supplement to the O'Hare Modernization Final Environmental Impact Statement (FEIS). We have outlined the basis of this conclusion in the enclosure.

Sincerely,

Barry D. Cooper
Regional Administrator
Great Lakes Region

Enclosure

FAA Response to City of Park Ridge Request Dated October 25, 2011

In response to the City of Park Ridge letter dated October 25, 2001, FAA provides the following information. The letter correctly states that the National Environmental Policy Act (NEPA), as implemented by 40 C.F.R. §1502.9(c)(1) of the Council on Environmental Quality (CEQ) regulations, provides for federal agencies to prepare supplements to environmental impact statements (EIS) if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact. In addition, under 40 C.F.R. §1502.9(c)(2) federal agencies may also prepare supplements when the agency determines that the purposes of the NEPA will be furthered by doing so.

An agency need not supplement an EIS every time new information comes to light. An SEIS is only required if the agency makes substantial changes in the proposed action relevant to environmental concerns, or if significant new information arises that will affect the quality of the environment "in a significant manner or to a significant extent not already considered." Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989). FAA issued the Record of Decision for O'Hare Modernization (ROD) on September 30, 2005.[1]

The FAA has, by order, adopted policies and procedures to prepare written reevaluations to determine whether to prepare an SEIS for projects to be implemented in stages or requiring successive federal approvals.[2] The provision for reevaluation of staged projects or requiring successive federal approvals does not apply to the FEIS.

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[1] The time to challenge FAA's ROD has long since passed (49 U.S.C. 46110). Previously project opponents challenged FAA's ROD and both Airport Improvement Program (AIP) and Passenger Facility Charge (PFC) funding. Challenges to the ROD and first Letter of Intent (LOI) were denied. The Court held that the FAA "appear[ed] to have acted with great care in conducting its analyses for the EIS and ROD" and also held "the LOI unreviewable because it was not an "order" under 49 U.S.C. §46110(a) because it was not final since Chicago had to apply for the grants each year." Village of Bensenville v. FAA, 457 F.3d 52, 72, 68-69 (D.C. Cir. 2006). A challenge to the first FAA grant issued under the LOI was dismissed for lack of standing because the "Petitioners had not shown that the single $29.3 million grant has caused their injuries, or that the court can redress those injuries." St. John's United Church of Christ v. FAA, 520 F.3d 460, 463 (D.C. Cir. 2008). The opponents challenge to PFC funding was also not successful. (See St. John's United Church of Christ v. F.A.A, 550 F.3d 1168, C.A.D.C. 2008). Park Ridge has not identified any ongoing discretionary Federal actions subject to NEPA.

[2] See FAA Order 1050.1E, Change 1, §514b(2). "For approved FEIS's, two sets of conditions have been established…(2) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy, and validity of the FEIS will be made at each major approval point

Close reading of the FEIS shows that the project is not staged. For example, the Phase I construction included "approvals for planning and land acquisition associated with the full O'Hare Modernization Program (Phase I and Phase II) – that is, expenditures that would only make sense if the full O'Hare Modernization Program is completed." See FEIS, U.4-569. Acquisition of Bensenville properties in Phase I was needed in order to relocate the Union Pacific Railroad and the Bensenville Ditch. These relocations were necessary for a number of reasons, including to allow construction of the south runway 10R-28L a Phase II project.

The FEIS shows projects according to phases for construction and financing, and the various "phases" had clearly overlapping timelines for concurrent construction and implementation. The FEIS and ROD did not set the temporal and geographic boundaries that would typify a project to be implemented in stages. For example, Table 5.20-6, Overview of Proposed Construction Plan (Delayed) shows that sub elements of Phase 1A, Phase 1C, Phase 2B, and Phase 2C were all scheduled to begin in September Year 1.[3] A written reevaluation is also not required because the approval needed for Chicago to complete the entire modernization was given in the ROD. There were no further approval points. Park Ridge simply mischaracterizes FAA's order in interpreting the term "staged" to be invariably synonymous with "phased" for all long term airport projects.

Section 1 – No information has been provided showing substantial changes to the project that are relevant to environmental concerns.

We now turn to the conditions for preparation of supplements under 40 C.F.R. §1502.9(c)(1). Park Ridge's letter asserts that FAA is required to prepare a SEIS because "there [have] been significant changes to the project." FAA has carefully reviewed your letter and has not been able to ascertain the basis for this position. Please provide any additional information that reflects significant changes to the proposed project that are relevant to the environment considerations so that they may be considered with specificity.[4]

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that occurs more than three years after approval of the FEIS and a new or supplemental EIS prepared, if necessary." See also, FAA Order 5050.4B, §1401(c)(3).

[3] In a challenge to FAA's Final Agency Decision approving $1.4 billion in PFC funds for construction of the O'Hare Modernization Program airfield and land acquisition, Petitioners unsuccessfully raised similar arguments to those presented in your letter that the O'Hare Modernization Program should be considered a staged project. [See Final Brief for the Petitioners (2008 WL 4239386), St. John's United Church of Christ v. FAA, 550 F.3d 1168 (D.C. Circuit 2008)]. The Court considered the arguments and were "not persuaded that the FAA's authorization of PFC funds was either arbitrary or capricious" and the challenge was partially dismissed and partially denied. *Id*. at 1174.

[4] Chicago continues to provide the FAA with additional information relating to the runway construction schedule modification resulting from the Illinois state court lawsuit

Section II – No significant new circumstances or information relevant to environmental concerns, and bearing on the proposed action or its impact to the ROD have been identified in the letter.

Section II of the letter provides a brief overview of why Park Ridge believes that an SEIS must be prepared "because of significant new information and circumstances that affect the quality of the human environment in and around O'Hare" based on air quality and noise concerns. We address those concerns below.

Section II.A of the letter focuses on the continued validity of the O'Hare Modernization FEIS air quality analysis under the Clean Air Act. FAA disagrees with the position that Chicago's continued construction of the projects approved in the ROD is "not within the scope of the final conformity determination reported under §93.155." 40 C.F.R. §93.157 states:

> "(a) Once a conformity determination is completed by a Federal agency, that determination is not required to be re-evaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in paragraph (b) of this section; or any modification to the action does not result in an increase in emissions above the levels specified in §93.153(b)…
> (c) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic re-determinations so long as such activities are within the scope of the final conformity determination reported under §93.155."

Since construction has not lapsed, the conformity determination has not lapsed, and the activities are within the scope of the final conformity determination reported under §93.155. Additional information can be found in "General Conformity Guidance for Airports, Questions and Answers" (including Questions 33-35) issued September 25, 2002, written by the Federal Aviation Administration, Office of Airport Planning and Programming, Community and Environmental Needs Division and the Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division.

FAA recognizes that the U.S. Environmental Protection Agency (USEPA) revised the particulate matter of 2.5 micrometers in diameter and smaller (PM2.5) standard in 2006, the primary nitrogen oxide standard in 2010, and the ozone standard in 2008. Even though the standards were revised, they were revised after FAA issued the ROD. Every time USEPA creates a new air quality standard, FAA is not required to supplement its EIS.[5] Further, FAA worked closely with the USEPA and the Illinois Environmental

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settlement between the City and the airlines in early 2011. FAA will review the additional information.

[5] An agency "need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision making intractable, always awaiting updated information only to find the new information

Protection Agency (IEPA) to develop a rigorous air quality protocol to analyze air quality impacts. See FEIS at 5.6-1. FAA's FEIS and ROD presented its air quality analysis and Park Ridge has not shown how these revised standards paint a dramatically different picture from that portrayed in the FEIS.

FAA previously addressed ozone in the environmental review process. The FEIS page 5.6-2 states:

> "O'Hare is located in an area designated as non-attainment for the 8-hour ozone standard (moderate non-attainment) and for the annual standard for particulate matter 2.5 microns or less in size. Notably, the area was previously designated as being a nonattainment area with respect to the 1-hour standard for ozone (severe). The U.S. Environmental Protection Agency (USEPA) revoked the 1-hour standard for ozone on June 15, 2005."

As discussed in FAA's FEIS, emissions from O'Hare-related sources along with emissions from all other sources were evaluated by the IEPA for the purpose of demonstrating compliance with the one-hour ozone National Ambient Air Quality Standard (NAAQS). These efforts indicated that the Chicago area can attain the standard with the O'Hare-related emissions.[6]

Further, FAA prepared a General Conformity Determination to demonstrate conformity with the State of Illinois' one-hour ozone attainment State Implementation Plan (SIP).[7] Based on the evaluation performed for the Conformity Determination, the FAA determined that O'Hare-related and project related emissions of nitrogen oxides and volatile organic compounds can reasonably be accounted for in the IEPA's established emission totals. As such, O'Hare-related and project related emissions would not have a significant effect on ozone levels within the airshed.[8]

In addition to the ozone analysis, FAA exceeded applicable requirements by thoroughly analyzing[9] PM2.5 emissions and explaining the results in the FEIS and in response to comments on the O'Hare Modernization Draft EIS (DEIS) and the FEIS. The FAA included an emissions inventory, project related emissions, and dispersion modeling for such emissions in the FEIS. See FEIS, Section 5.6. The FAA responded to additional

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outdated by the time a decision is made." Headwaters, Inc. v. BLM, 914 F.2d 1174, 1177 (9th Cir. 1990)

[6] See FAA's response to a comment from the Alliance of Residents Concerning O'Hare, Inc (AReCO) in the FEIS on page U.4-309. This portion of the FEIS provides additional information on the analysis of ozone emissions.

[7] The Final General Determination can be found in Appendix J of the FEIS.

[8] See FAA's response to a comment from AReCO in the ROD, page A.2-267.

[9] FAA was not required to do a conformity determination for PM2.5 because the standard was new, USEPA had not established general conformity requirements, and there was no approved state implementation plan for attaining the new standard (See FEIS, Sect. 5.6.4).

comments by AReCO relating to PM2.5 in the FEIS and ROD.[10]

Section II of the Park Ridge letter asserts that O'Hare Modernization PM2.5 emissions substantially exceed the allowable amount under the current 2006 NAAQS standard and that "it is likely the Chicago metropolitan area will be redesignated as non-attainment for PM2.5 NAAQS with ambient air quality in violation of the Clean Air Act." In support, the letter states that measured PM 2.5 emission in the FEIS were below the 1997 USEPA standard of 65 micrograms per cubic meter, however the standard changed in 2006 to 35 micrograms per cubic meter.

First, recent measurements of emissions in the vicinity of the airport are consistent with the FEIS and contradict the claim of "substantial exceedances" of "the allowable amount under the current standard." The Schiller Park monitoring site (just to the east of the airport) had a 3 year average annual concentration for PM2.5 of 14.6 micrograms per cubic meter from 2006-2008. These measured levels are well below both the 35 and 65 micrograms per cubic meter standards.

Second, even if the 2006 standard did apply, an SEIS would not be required. The 2006 standards are not significant new information because both Cook and DuPage Counties, where O'Hare is located, are designated attainment for the 2006 standard. The Clean Air Act general conformity requirements to not apply to areas that are designated attainment for a pollutant. A general conformity determination would not be required even if the 2006 standard did apply to this project.

As to the claim that the area is about to be designated non-attainment, this is not significant new information because it relates to the 1997 PM 2.5 standard. Cook and DuPage Counties are designated as maintenance areas for the 1997 standard. The FAA effectively considered this standard by providing and evaluating the modeling results of PM 2.5 emissions in the FEIS.[11]

FAA noted in the ROD that the selected alternative would increase PM 2.5 emissions but that it would not result in violations of or delay attainment of the PM 2.5 NAAQS (then the 24 hour standard at 65 micrograms per cubic meter and the annual standard at 15 micrograms per cubic meter). ROD at page 70. As shown in the Maximum Macroscale Dispersion Modeling Results in the FEIS Table 5.6-27, the PM2.5 concentrations are virtually the same for No Action and the selected Alternative C. FEIS 5.6-67. As noted, in 2005 USEPA had not established conformity requirements for PM 2.5. Since then USEPA has established a 100 tons per year de minimis threshold. If a conformity applicability analysis had been required for PM 2.5 in 2005, based upon the current 100 tons per year de minimis threshold, then the FAA would have concluded that the selected

[10] For the response, see the FEIS at U.4-307. See also FAA's Response to additional comments on the FEIS by AReCO in the ROD at A.2-246.

[11] The Illinois Environmental Protection Agency submitted the revised Maintenance Plan for the 1997 PM2.5 standard to USEPA, but, as of February 1, 2012, has not received approval or comments.

alternative was de minimis. The air quality analysis in the FEIS indicated that PM 2.5 emissions resulting from the selected alternative were below the de minimis level for Construction Phase I, Construction Phase II, Build Out and Build Out +5. The letter contains no evidence to suggest that the project related PM2.5 emissions presented in the FEIS will impact the region's ability to maintain the PM2.5 2006 standard or attain the 1997 standard.

The letter also claims that USEPA's establishment of a new one hour standard for nitrogen dioxide in January 2010 requires an SEIS. However, the fact that Cook and DuPage Counties are in attainment for the new standard contradicts the claim that this is significant new information. Moreover, FAA previously addressed nitrogen oxides in the environmental review process. The FEIS disclosed that the project related change in NOx emissions would represent approximately 0.03 and 0.05 percent of the total emissions within the Chicago area. Further, total airport related emissions of nitrogen emissions would represent less than 4 percent of the total emissions within the Chicago area. See, FEIS, Section 5.6 and Response to AReCO Comment, page A.2-266 of the ROD. Since FAA does not consider the letter's Section II.A air quality discussion correct, no SEIS is necessary.

Section II.B of the letter discusses FAA's consideration of the "Park Ridge Study" (also referred to as the Mostardi-Platt Air Toxic Study).[12] The FEIS was issued in July 2005 and included a 174 page Appendix I, Hazardous Air Pollutants Discussion. As noted in the letter, the Park Ridge Study was one of many reviewed and considered by the FAA and is listed on page I-36 of the FEIS. The Park Ridge Study concluded that "lessons learned from this study can now be used to design and implement a more comprehensive investigation that will ultimately provide a more detailed picture of the affect that air pollution from O'Hare International Airport has on the surrounding communities." However the Park Ridge report states the results of their analysis "should be considered preliminary, and could be refined through additional air monitoring or more sophisticated emission, dispersion, and exposure modeling".[13]

As discussed in Appendix I of the FEIS, FAA, with agreement from both the USEPA and the IEPA, determined it was appropriate to perform an analysis for Hazardous Air Pollutants (HAPs) for disclosure purposes (See Appendix I of the FEIS). The methodology for the study was coordinated closely with the USEPA and the IEPA and the analysis was included in the FEIS. Inventories of airport-related speciated organic gases (OGs) which include the OGs identified by the USEPA to be HAPs and the OGs listed in the USEPA's Integrated Risk Information System (IRIS) are not required by current USEPA regulations. The FAA's Guidance for Quantifying Speciated Organic Gas Emissions from Airport Sources was issued on September 2, 2009 and is applicable for FAA NEPA documents issued after that date.

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[12] For the record, please note that the correct citation for Footnote 2 of the letter is: (http://www.faa.gov/about/office_org/headquarters_offices/apl/research/models/history/media/2003-06_Integration_of_AERMOD_into_EDMS.pdf)

[13] See FEIS pages I-38-39.

The letter also states that the conclusion in an Environmental Health article dated May 8, 2009 entitled: "Between-airport heterogeneity in air toxics emissions associated with individual cancer risk thresholds and population risks" by Ying Zhou and Jonathan I Levy is "in direct conflict with the EIS."[14] FAA sponsored this article and the letter takes no notice of the study's own "Limitations" section. For example, the "Limitations" section indicates that "more comprehensive analyses including formal examination of key sensitivities and uncertainties would be needed to draw policy-relevant conclusions for these and other airports" when referring to O'Hare. The study also acknowledges that "any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the FAA."

FAA shows its commitment to reducing air quality and noise impacts throughout the U.S. in the FAA's Center of Excellence named PARTNER. PARTNER – the Partnership for AiR Transportation Noise and Emission Reduction – is a leading aviation cooperative research organization sponsored by FAA, National Aeronautics and Space Administration, Transport Canada, the U.S. Department of Defense, and USEPA. PARTNER research fosters advances in alternative fuels, emissions, noise, operations, aircraft technologies, and science and decision-making for the betterment of mobility, economy, national security, and the environment. The organization's operational headquarters is at the Massachusetts Institute of Technology.[15] The Zhou/Levy research study is part of the ongoing PARTNER, Project 11, entitled "Health Impacts of Aviation related Air Pollutants" which is explained on its Project 11 website.[16] The website identifies that the "main science objective of this project is to understand and evaluate how aviation emissions contribute to local and regional air quality, through a combination of measurement and modeling studies, and to evaluate the potential incremental health risks due to air pollutants such as particulate matter, ozone, and hazardous air pollutants." The Zhou/Levy study is one of many studies sponsored by FAA.

For a variety of reasons, including that FAA sponsored Project 11 research regarding health related pollution is ongoing, no new HAPs guidance has been developed based on the Zhou/Levy article, and the letter provides no basis that a new HAPs study would result in significantly different impacts. FAA will not prepare an SEIS based on the letter's Section II.B HAPs discussion.[17]

Section II.C of the letter focuses on noise contours. FAA disagrees with the assertion in the letter that that the noise contours in the FEIS are expanding. This conclusion is based

[14] http://www.ehjournal.net/content/8/1/22
[15] See http://web.mit.edu/aeroastro/partner/index.html
[16] http://web.mit.edu/aeroastro/partner/projects/project11.html
[17] An agency "need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision making intractable, always awaiting updated information only to find the new information outdated by the time a decision is made." Headwaters, Inc. v. BLM, 914 F.2d 1174, 1177 (9th Cir. 1990).

on a misunderstanding of noise metrics and methodologies utilized by FAA. The single event noise level data gathered from monthly noise monitoring by the Chicago Department of Aviation provided to the O'Hare Noise Compatibility Commission (ONCC) and the results of the two-week monitoring at Maine South High School (which is sound insulated) *are not* the same as the cumulative annual 65 Day-Night Average Sound Level (DNL) contours reported in the FEIS.

As directed by the U.S. Congress in the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (49 U.S.C. §47501), FAA established single systems for measuring noise and determining the exposure of individuals to noise resulting from airport operations by issuing 14 CFR Part 150. The FAA determined that the cumulative noise energy exposure of individuals to noise resulting from aviation activities must be measured in terms of the day-night average sound level DNL in decibels (dB). The DNL has also been identified by the USEPA as the principal metric for airport noise analysis.

DNL is a 24-hour equivalent sound level, and is expressed as an average noise level on the basis of annual aircraft operations for a calendar year. To calculate the DNL at a specific location, Sound Exposure Levels (SELs) (the total sound energy of a single sound event) for that particular location are determined for each aircraft operation (landing or takeoff). The SEL for each operation is then adjusted to reflect the duration of the operation and arrive at a "partial" DNL for the operation. The partial DNLs are then added logarithmically, with the appropriate penalty for those operations occurring during the nighttime hours, to determine total noise exposure levels for the average day of the year.

The FAA's Integrated Noise Model (INM) produces DNL noise contours. INM is a computer model used to develop aircraft noise exposure maps. INM is the industry standard for calculating the level of aircraft noise at and around airports. INM uses a database of aircraft noise characteristics to predict DNL based on user input on the types and number of aircraft operations, annual average airport operating conditions, average aircraft performance, and aircraft flight patterns. INM was used to generate the noise conditions for existing and future conditions presented in the FEIS.

In Part 150 FAA also established DNL 65 dB as the level at which residential land uses are normally compatible with airport noise, based on annoyance and other factors. These metrics, methodologies, and guidelines are widely accepted and were developed following coordination with other Federal agencies. FAA subsequently relied upon Part 150 in adopting its policies and procedures to implement NEPA. FAA required the use of Part 150 methods to measure and describe aircraft noise exposure and defined a DNL 1.5 dB or greater noise increase at or above DNL 65 dB as the threshold of significant noise impacts for residential land uses. See, FAA Order 1050.1E, Environmental Impacts: Policies and Procedures."[18]

[18] http://www.faa.gov/documentLibrary/media/order/energy_orders/1050-1E.pdf, Appendix A, paragraph 14.3, page A-61"A significant noise impact would occur if

The 85 dB levels you reference in the letter are Single Event Levels (SEL) not DNL. As noted above, the FAA measures and defines the significance of aircraft noise exposure in EISs in terms of cumulative DNL noise levels, not SEL. Since 1996 the City has utilized the Airport Noise Management System (ANMS) to monitor the amount of noise being generated over the communities surrounding O'Hare by the aircraft operating at the airport. The ANMS collects, analyzes, and processes data from a number of sources of information including a network of 30 noise monitors near O'Hare, FAA radar data, weather data, and telephone calls to the City's noise hotline. This monthly data, including the SEL levels which you referred to, is not the basis for the noise contours presented in the FEIS.

The City of Chicago is sound insulating residences within the DNL 65 dB Build Out contour in accordance with the requirements of the ROD. The mitigation will be complete prior to Build Out. In accordance with the ROD, after Build Out occurs, the City of Chicago will produce a DNL 65 dB noise contour based on the operational characteristics of the Build Out configuration, but with forecasted operational levels five years in the future from when Build Out occurs, thus creating a new contour referred to as Build Out +5 Forecast Contour (BO +5 F). The City will then insulate all eligible residences and schools within the BO +5 F DNL 65 dB and greater noise contour, but outside of the No Action (Alternative A) Build Out +5 DNL 65 dB and greater noise contour presented in the FEIS, by the time Build Out +5 would occur.

Since the discussion of noise contours contained in Section II.C of the letter, is based on a flawed understanding of noise metrics, FAA does not consider an SEIS to be warranted.

Section II.D of the letter discusses greenhouse gas emissions (GHGs). FAA disagrees with the statement in the letter that, since issuance of the ROD in 2005, Federal agencies have been required to address GHGs in their environmental impact statements.[19] The Council on Environmental Quality document *DRAFT NEPA GUIDANCE ON CONSIDERATION OF THE EFFECTS OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS* was issued on February 18, 2010, and remains a draft document. Due

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analysis shows that the proposed action will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure when compared to the no action alternative for the same timeframe.

[19] For example, in North Carolina Alliance for Transp. Reform, Inc. v. U.S. Dept. of Transportation, 713 F.Supp.2d 491 (M.D.N.C. 2010) the "Plaintiffs attack[ed] Defendants' conclusion that no national standards exist for evaluating the issue, arguing that Defendants should have considered proposed USEPA rules requiring annual greenhouse gas reports from certain stationary facilities. *See* 74 Fed. Reg. 16448 (Apr. 10, 2009). But as Defendants aptly point out, these were only proposed regulations at the time, do not apply to highway projects, and post-date the ROD. (Doc. 31 at 14.) Defendants' failure to employ them did not violate NEPA." (*Id*. at 520, emphasis added). See similar conclusion in Hillsdale Environmental Loss Prevention, Inc. v. U.S. Army Corps of Engineers, Slip Copy, 2011 WL 2579799, 10, (D.Kan.,2011).

to this incorrect assumption contained in the letter's Section II.D GHGs discussion, FAA will not prepare an SEIS.

Based on the above, FAA does not consider the discussion in Section II of the letter to have provided "significant new circumstances, information relevant to environmental concerns and bearing on the proposed action or its impact" (40 C.F.R. §1502.9(c)(1)(ii)). Therefore, FAA has determined that no basis has been provided to require the preparation of a written reevaluation or an SEIS. An SEIS is only required where new information "provides a *seriously* different picture of the environmental landscape." State of Wisconsin v. Weinberger, 745 F.2d 412, (7th Cir. 1984)(emphasis in original). Nor has Section II shown that further analysis would show "seriously" different environmental impacts.

Section III – Agency Discretion

The letter requests that should FAA not agree with position that there have been significant changes to the project or that there is significant new information, FAA should agree to prepare a SEIS based on Agency discretion. Section III of the letter also provides a discussion of noise metrics.[20]

The FAA provided extensive opportunities for the public to comment on O'Hare Modernization throughout the EIS process. In addition to public hearing testimony, the FAA received comments in the following formats: written, private testimony, email, and voice mail. Overall, the FAA received approximately 3,500 pages of comments on the DEIS and FEIS and related documentation (Draft General Conformity Determination and Draft Section 4(f)/6(f) Evaluation). Every comment was considered and addressed in the FEIS and/or the ROD. Despite this open process by the FAA and the enormous public involvement in the review, the FAA's approvals resulted in one of the most litigated aviation projects in history in Federal court. FAA successfully defended against each challenge after issuing the ROD in September 2005. In addition, Chicago successfully defended itself in Illinois state court in numerous lawsuits related to O'Hare Modernization.

[20] With regards to your request for the FAA to select a different metric other than 65 DNL as a significance threshold, the FAA is involved in the following studies:
1. Transportation Research Board Airport Cooperative Research Program Project 02-35 - *Research Methods for Understanding Aircraft Noise Annoyance and Sleep Disturbance* (http://apps.trb.org/cmsfeed/TRBNetProjectDisplay.asp?ProjectID=3037), and
2. Partnership for AiR Transportation Noise & Emissions Reduction (PARTNER) Project 24 - Noise Exposure Response: Annoyance (http://web.mit.edu/aeroastro/partner/projects/project24.html). The FAA will review and consider the results of the studies when they are complete. The status of the projects can be found at the links noted above.

Based in part on the thorough environmental review process completed for the FEIS and ROD, FAA declines to exercise its discretion under 40 C.F.R. §1502.9(c)(2) to "prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so." FAA does not agree that an SEIS would further the purpose of NEPA.